In The High Court of Uttaranchal, at Nainital

Criminal Misc. Application No. 221/ 2006

Dr. Dheer Singh S/o Late Seeta Ram

R/o Shekhupura Kankhal, P.S. Kankhal,

District Haridwar ….. Petitioner.

Versus

1- State of Uttaranchal.

2- Neel Kamal Verma S/o Shankar Lal Verma
R/o B-61, Shastri Nagar, Jwalapur,
P.S. Jwalapur, District Haridwar …Respondents.

Sri Pankaj Miglani, learned counsel for the petitioner.
Sri Nandan Arya, learned A.G.A.

(Hon'ble B.C. Kandpal, J.)

Dated: 10-04-2006

By way of this petition under Section 482 Cr.P.C., the petitioner has prayed for quashing the orders dated 12-9-2005 and 24-3-2006, passed in criminal Case No. 369/2005.

2- Brief facts of the case giving rise to this petition are that a complaint was filed by respondent No.2 U/S 138 of the Negotiable Instruments Act and in support of the complaint the statement of the complainant U/S 200 Cr.P.C. was recorded. Thereafter the trial Court vide order dated 12-9-2005 took the cognizance of the matter and issued summon to the petitioner. The petitioner in pursuance to the summon issued to him, appeared before the trial court and obtained his bail. Thereafter the trial proceeded and the statement of the complainant U/S 254 Cr.P.C. was recorded on 27-2-2006.

3- The petitioner thereafter moved an application stating therein that there was no evidence available against him, hence he should be discharged. The learned trial court vide order dated 24-3-2006 rejected the application.

4- Feeling aggrieved by the aforesaid impugned order, this petition has been filed before this court.

5- Heard learned counsel for the petitioner, learned A.G.A. and perused the record.

6- Learned counsel for the petitioner has submitted that there is a mandatory provision of 15 days stipulated U/S 138 of the Negotiable Instruments Act, but the record nowhere shows that when the cheque in question was presented for realizing the money. It has also been submitted that the acknowledgement for the service of notice is not produced along with the complaint, hence the complaint is not maintainable.

7- Learned counsel for the petitioner has also cited the following rulings of various courts before me in order to substantiate his argument:

1- **Ashok Hegde Vs. Jthin V. Attawan; 1997 (4) RCR (Criminal) 530.**

2- **Dave Pruthvishkumar Bhanuprasad Vs. State of Gujarat; 2000(2) R.C.R. (Criminal) 313.**

3- **Smt. Mani Mittal Vs. State of U.P. & another; 2004 [1] AAR 231 (H.C.)**

4- **Shakti Travel & Tours Vs. State of Bihar & another; (2002) 9S.C.C., 415.**

5- **Patel Dinneshkumar Shivram Somdas Vs. Patel Keshavlal Mohanlal; 2000(3) R.C.R. (Criminal) 127.**

6- **Rukmaniraj Yarn Company Vs. Thangapratap Spinning Mills (P) Ltd. 2000(1) Civil Court Cases (Madras) 532.**

8- Having considered the rulings cited by the learned counsel for the petitioner in support to his contention, I am of the view that all these rulings do not help the petitioner at this stage. In the instant case the matter was fixed for the statement of the petitioner to be recorded U/S 313 Cr.P.C. and on that day the petitioner before the trial Judge for his discharge filed the application. The trial Judge has rightly observed that the petitioner will get an opportunity to adduce the evidence in his defence and with this observation the trial court rejected the application. The record further reveals that on the same day the

statement of the petitioner was recorded by the court concerned U/S 313 Cr.P.C. and the petitioner requested for a date to adduce the defence evidence. Accordingly the trial Judge fixed 5th April, 2006 for defence evidence.

9- It is thus clear that the petitioner by filing this petition has adopted the tactis to linge-ron the matter for no justified reason.

10- I do not find any abuse of process of court. This petition filed by the petitioner appears to be an exercise to stifle a legitimate prosecution. I am not supposed to give any premature decision in the case where the matter is to be decided on the basis of the evidence adduced before the trial Judge. I am not supposed to embark upon an inquiry as to the realibility of the evidence and substainability of the accusaition on a reasonable appreciation of such evidence. The petition lacks merit and is liable to be dismissed.

11- Accordingly the petition is dismissed.

(B.C. Kandpal, J.)

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